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EXAMINER

GOTTSCHALK, MARTIN A

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3694	

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No. 09/876,311	Applicant(s) GOODMAN ET AL.	
Examiner Martin A. Gottschalk	Art Unit 3694	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 17 July 2007.
- 2a)  This action is **FINAL**.
- 2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-7 and 14-16 is/are pending in the application.  
4a) Of the above claim(s) 8-13 and 17-19 is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-7 and 14-16 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)
- 2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5)  Notice of Informal Patent Application
- 6)  Other: \_\_\_\_\_

**DETAILED ACTION**

***Notice to Applicant***

1. Claims 1-19 are pending. Applicant's election without traverse of claims 1-7 and 14-16 in the restriction requirement mailed 05/18/2007 is acknowledged.

***Claim Rejections - 35 USC § 112***

2. These rejections are hereby withdrawn.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3, and 5-7 are rejected under 35 U.S.C. 102(e) as being anticipated by Brown (US Pat# 6,151,586).

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A. As per claim 1 Brown discloses a method of incentivising members of a disease management programme to comply with the programme (Brown: col 5, lns 14-16), the method comprising the steps of:

(a) defining a plurality of general programme (Brown: col 12, lns 18-23) areas and a plurality of specific programme areas (Brown: col 12, lns 23-25);

(c) awarding points to a member of each of the specific programme areas in which the member participates, only if the member is afflicted with a disease, to which the specific programme area in which the member participates has been determined to be of particular benefit (Brown: col 8, lns 37-53; col 23, lns 45-57);

(e) calculating the total number of points awarded to the member (Brown: col 11, lns 33-36, reads on "fulfilled the evaluation criteria"; col 23, lns 45-57);

and

(f) allocating a reward to the member if the total number of points awarded to the member accumulate to a predetermined amount (Brown: col 23, lns 45-57).

Brown fails to explicitly teach awarding points separately to general and specific program areas as recited in amendments to claim 1:

(a) wherein the plurality of general programme areas are programme areas that if complied with will be of benefit to a member stricken with any disease managed by the disease management programme and wherein the plurality of specific programme areas are programme areas that are determined to be of particular benefit to a member afflicted with some but not all of the diseases managed by the disease management programme;

(b) awarding points to a member for each of the general programme areas in which the member participates;

However, Bro teaches a method and system of behavioral modification which uses rewards to reinforce desired behavior (e.g. Bro: col 41, Ins 34-38). The teachings include applying the method to both 1) general (e.g. Bro: col 11, In 20, "exercise) program areas, where participation would be valuable to a patient regardless of the patient's disease state, and 2) specific areas, such as programs relating to specific chronic diseases (e.g. Bro: col 12, Ins 47-53).

It would have been obvious to incorporate the teachings of Bro allowing for reward programs applicable to general and specific areas, with the health care compliance system of Brown with the motivation of leveraging the ability of an expert to affect behavioral change using telecommunications systems (Bro: col 5, Ins 48-52).

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B. As per claim 2, Brown discloses a method according to claim 1, wherein

points are only awarded to the member if the member participates in all of the programme areas which are associated with the disease or diseases with which the member is afflicted (Brown: Fig. 15A and 15B; col 13, ln 19 to col 14, ln 37; Figs. 10 and 11. Note that both criteria of questions being answered and measurements being within limits must be met if the coupon is to be given.)

C. As per claim 3, Brown discloses a method according to claim 1 wherein

additional points are awarded to the member if the member participates in all of the programme areas which are associated with the disease or diseases with which the member is afflicted (The Examiner notes the rejection provided for claim 2 above and further notes that a repetition of this process would result in additional coupons being given. Repetition of the process would be expected for patients involved in disease management programs associated with chronic diseases such as the examples of diabetes and asthma cited in the Brown reference).

D. As per claim 5, Brown discloses a method according to claim 1 wherein

the specific programme areas are one or more of

blood pressure,  
flow volume loop measurement,  
influenza vaccine,  
pneumococcal vaccine,  
cholesterol and  
long term glucose control (Brown: Fig. 5A; Fig 5B, item 124; Fig. 6A).

E. As per claim 6, Brown discloses a method according claim 1 further including the steps of:

(a) defining a measurable within at least one of

the general (Brown: col 23, Ins 45-57; Figs. 15A and 15B, the Examiner notes that the overall evaluation criteria involves both the compliance questions of Fig 15A, item 412, and the physiological measurements of Fig. 15B, items 420-424) or

specific programme areas (Brown: col 5, ln 66 to col 6, ln 15, i.e. data from one of the monitoring devices)

so that a members performance within said programme area can be ascertained;

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(b) defining a minimum level of the measurable, which minimum level indicates a minimum required level of member performance within the at least one programme area (Brown: col 8, 48-53); and

(c) awarding points to a member if the member obtains the defined minimum level of a measurable for the at least one programme area only if the member is afflicted with a disease which is associated with that particular programme area (Brown: col 8, Ins 37-53).

F. As per claim 7, Brown discloses a method according to claim 6 further comprising the step of

awarding additional points to the member if the member obtains the minimum level of a measurable for all of the programme areas which are associated with the disease with which the member is afflicted (The Examiner notes the rejection provided for claim 6 above and further notes that a repetition of this process would result in additional coupons being given. Repetition of the process would be expected for patients involved in disease management programs associated with chronic diseases such as the examples of diabetes and asthma cited in the Brown reference).



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5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 4, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown as applied to claims 1 and 8 above, and further in view of Bro (US Pat# 5,722418, hereinafter Bro).

A. As per claim 4, Brown discloses a method according to claim 1 wherein

the general programme areas is

education (Brown col 16, Ins 26-35).

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but fails to disclose the remaining features of the claim which is well known in the art as evidenced by the teachings of Bro who teaches

the general programme areas are some of

diet,

exercise,

and

smoking (Bro: col 11, lns 12-24).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Bro within the method of Brown with the motivation of implementing and reinforcing a patient's medical regimens (Bro col 40, lns 25-27).

B. As per claims 14 and 15, Brown fails to explicitly disclose the features of these claims, however, they are well known in the art as evidenced by the teachings of Bro who teaches

a method according to claim 1 wherein

(claims 14)

the amount of the reward is related to the amount of points accumulated by the member.

and

(claims 15) the reward is a cash payout or special options on services  
(for both claims, see Bro: col 38, ln 5, to col 39, ln 10; col 34,  
lns 3-18 and 31-56).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Bro within the method of Brown with the motivation of implementing and reinforcing a patient's medical regimens (Bro col 40, lns 25-27).

8. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Bro as applied to claims 15, and further in view of Sehr (US Pat# 6,085,976, hereinafter Sehr).

A. As per claims 16, Brown and Bro fail to teach the features of the claim, however, these features are well known in the art as evidenced by the teachings of Sehr who teaches a method according to claim 15

wherein the services are one or more of

airplane tickets,

hotel accommodations,

and

car rentals (Sehr: col 32, ln 64 to col 33, ln 48, note the use of "frequent mileage points" as rewards).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Sehr with the combined teachings of Brown and Bro with the motivation of reducing the administrative costs associated with non-computerized systems (Sehr: col 2, lns 7-26).

### ***Response to Arguments***

9. Applicant's arguments in the response filed 02/23/2007 have been fully considered but they are not persuasive. Applicant essentially argues differences in the conception of "general areas" between Applicant's invention and the Brown reference. The Examiner does not concede that substantive differences exist. Nor has Applicant pointed to passages in the specification which show the definition alluded to in the second paragraph on page 14 of the response. Nonetheless the Bro reference has been brought in to show that the prior art contains reward systems relating to both

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general and specific areas more closely resembling the description Applicant provides of the current invention on page 14 of the response (i.e. the disease-related programs are the specific programs, and programs such as "exercise" are the general programs). See the citations provided above for claim 1.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Martin A. Gottschalk whose telephone number is (571) 272-7030. The examiner can normally be reached on Mon - Fri 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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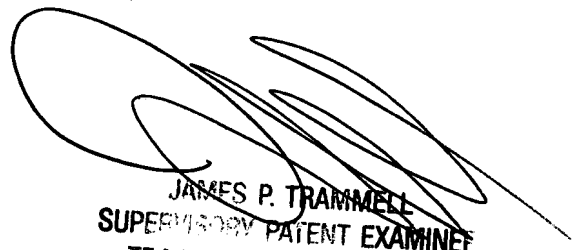
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10/01/2007



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